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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Bell Operating Company Provision of )  
Out-of-Region Interstate, Interexchange Services )

CC Docket No. 96-21

**REPLY COMMENTS OF LDDS WORLDCOM**

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its reply to the initial comments filed in response to the Notice of Proposed Rulemaking ("Notice"), FCC 96-59, released by the Commission on February 14, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

**I. INTRODUCTION AND SUMMARY**

In its Notice, the Commission describes the substantial market power possessed by the Regional Bell Operating Companies ("RBOCs") in the local exchange market, and the need for public interest safeguards to protect competition and ratepayers from potential RBOC misdeeds.<sup>1</sup> The Commission proposes to regulate as nondominant those long distance services provided by the RBOCs through a structurally separate subsidiary. Should an RBOC choose to provide its local and out-of-region long distance services together, the FCC proposes as an interim measure to regulate those services as dominant.<sup>2</sup>

<sup>1</sup> Notice at paras. 9-10.

<sup>2</sup> Notice at para. 11.

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Not surprisingly, all the RBOCs' initial comments deride the very notion that the RBOCs somehow would possess market power in any part of the long distance services market.<sup>3</sup> The RBOCs -- excepting NYNEX -- also claim that the Telecommunications Act of 1996 either expressly prohibits or implicitly disfavors the imposition by the Commission of any public interest safeguards on the RBOCs' provision of out-of-region long distance services, including a separate subsidiary requirement.<sup>4</sup>

LDDS WorldCom shares the well-founded concerns of most commenters that the RBOCs' local bottleneck gives them significant market power in the adjacent interexchange market, even for out-of-region long distance services (though admittedly their in-region stranglehold is far greater). As pointed out by AT&T, MCI, Sprint, the Competitive Telecommunications Association ("CompTel"), Cable & Wireless, Excel Telecommunications, Telecommunications Resellers Association ("TRA"), Association for Local Telecommunications Services ("ALTS"), and others, it is obvious that the Bell Companies possess significant and undiminished market power within their local exchange regions, and by virtue of their concomitant bottleneck control over access to the competitive long distance market.<sup>5</sup> Given this overwhelming market power, LDDS WorldCom believes that the FCC's proposed bifurcated regulatory treatment of the RBOCs' long distance services -- nondominant treatment of services

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<sup>3</sup> NYNEX Comments at 8; US West Comments at 3-4; Pacific Bell Comments at 5; Ameritech Comments at 3; SBC Comments at 8-9; Bell Atlantic Comments at 2-3; BellSouth Comments at 9-11.

<sup>4</sup> US West Comments at 2, 4; Pacific Bell Comments at 5; Ameritech Comments at 7-8; SBC Comments at 5-6; Bell Atlantic Comments at 4-5; BellSouth Comments at 2-4.

<sup>5</sup> AT&T Comments at 5-8; MCI Comments at 5-9; Sprint Comments at 2; CompTel Comments at 2-7; Cable & Wireless Comments at 2; Excel Comments at 2-5; TRA Comments at 6-18.

provided via separate subsidiary, dominant treatment of services not provided via separate subsidiary -- appears to be a largely reasonable means of assuring that the Bell Companies do not use their market power to impede competition and harm ratepayers. However, LDDS WorldCom urges the Commission to significantly strengthen its proposed separate affiliate requirements in order to minimize the RBOCs' ability to discriminate against competitors and cross-subsidize their long distance ventures with ratepayer funds.

**II. LDDS WORLDCOM JOINS THOSE COMMENTERS WHICH GENERALLY SUPPORT THE FCC'S PROPOSAL TO CLASSIFY AS NONDOMINANT THE BELL OPERATING COMPANIES' PROVISION OF OUT-OF-REGION INTEREXCHANGE SERVICES VIA SEPARATE SUBSIDIARIES**

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**A. The Bell Companies Have Substantial Market Power Given Their Monopoly Bottleneck Control Over Critical Access Points To The Long Distance Market**

The RBOCs in unison voice disbelief that they possess market power in the local exchange and access markets that translates into market power in the adjacent interexchange services market. For example, Ameritech argues that its out-of-region interLATA services should not be classified as dominant because the RBOC currently has "no customers, no presubscribed lines, no traffic, and no revenues" in the long distance market.<sup>6</sup> The other RBOCs agree.<sup>7</sup> US West even suggests that the FCC "should simply terminate this docket and permit BOC interLATA services to develop within the context of the marketplace and the Act."<sup>8</sup> However, there is no merit to these self-serving claims.

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<sup>6</sup> Ameritech Comments at 3.

<sup>7</sup> NYNEX Comments at 8; US West Comments at 3-4; Pacific Bell Comments at 5; SBC Comments at 8-9; Bell Atlantic Comments at 2-3; BellSouth Comments at 9-11.

<sup>8</sup> US West Comments at 5.

The Commission has long recognized that the RBOCs retain substantial market power in the local exchange, based on their unique control over bottleneck facilities. The Notice itself concludes that the RBOCs "continue to control bottleneck local exchange facilities in their in-region states."<sup>9</sup> What the RBOCs repeatedly -- and incorrectly -- fail to recognize is the critical and inextricable link between market power in the local exchange and access markets, and market power in the long distance market. As CompTel explains, a key determinant of market power under the FCC's own definition is the fact that the RBOCs control a bottleneck facility -- the local exchange network -- that is essential to competitors in the long distance market.<sup>10</sup> AT&T also discusses this "established linkage between local bottlenecks and market power."<sup>11</sup> It is notable that even Ameritech admits that interstate access is an "essential commodity or facility" within the Commission's classic market power definition.<sup>12</sup> MCI shows further how the RBOCs' local bottleneck power can be exercised beyond the boundaries of any one RBOC's service area,<sup>13</sup> while CompTel explains how the RBOCs' market power extends both to interexchange carriers and to the RBOCs' potential in-region and out-of-region customers.<sup>14</sup> Given the paramount fact of overwhelming RBOC market power, and the lack

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<sup>9</sup> Notice at para. 9.

<sup>10</sup> CompTel Comments at 2-3. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 21 (1980).

<sup>11</sup> AT&T Comments at 6, 7.

<sup>12</sup> Ameritech Comments at 4.

<sup>13</sup> MCI Comments at 5-9.

<sup>14</sup> CompTel Comments at 3-5; see also AT&T Comments at 8; Excel Comments at 3-5.

of any meaningful competition in the local exchange market now and in the immediate future,<sup>15</sup> the RBOCs have every ability and incentive to leverage their market power into discriminatory conduct against their new rivals in the long distance market.<sup>16</sup>

The Commission, and the parties, should not have to continually reargue the obvious: that the RBOCs control monopoly bottlenecks that will not disappear overnight, and that these bottlenecks constitute substantial market power in the adjacent long distance services market. The public interest dictates that the Commission craft the appropriate safeguards to prevent the RBOCs from exercising the full extent of their market power in discriminatory and anticompetitive ways.

**B. The Commission Has Undiminished Authority Under The New Act To Impose Appropriate Public Interest Safeguards, Including A Separate Subsidiary Requirement, On The Bell Companies' Provision Of Out-of-Region Long Distance Services**

The Notice proposes classifying as nondominant the out-of-region interLATA services provided by the RBOCs, but only on the condition that the RBOCs utilize a separate affiliate similar to the one that independent LECs were required to establish under the FCC's Competitive Carrier rules.<sup>17</sup> In the absence of such an affiliate, the RBOCs' out-of-region services would be regulated as dominant.

Excepting NYNEX, the RBOCs express strong displeasure at the Commission's proposal and insist that it is contrary to the dictates of the new Telecommunications Act of

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<sup>15</sup> TRA Comments at 6-11.

<sup>16</sup> See, e.g., TRA Comments at 12-18; Sprint Comments at 2.

<sup>17</sup> Notice at para. 11.

1996.<sup>18</sup> Stating that Congress "rejected a separate subsidiary requirement for out-of-region services," BellSouth finds the Commission's proposal to be "repugnant to the 1996 Act" and "directly contrary to the will of Congress, as expressed in the statute itself."<sup>19</sup> Ameritech, Bell Atlantic, and SBC also claim that the separate subsidiary option would be "inconsistent" with the letter and spirit of the Act,<sup>20</sup> while US West and Pacific Bell only observe that Congress expressly declined to impose a separate subsidiary requirement.<sup>21</sup> Interestingly, by expressing support for the Commission's proposal, NYNEX implicitly accepts the FCC's authority to condition favorable regulatory treatment on the use of a separate subsidiary.

As usual, the RBOCs' display of regulatory and statutory interpretation generally leaves much to be desired. First, as is obvious from the face of the Notice, the Commission nowhere requires that the RBOCs adopt a separate subsidiary to provide out-of-region interLATA services. Rather, the Notice merely attaches this necessary public interest safeguard to the preferential nondominant treatment of the RBOCs' out-of-region services. Nothing prevents the RBOCs from providing their local and long distance services on a unified basis, so long as the FCC's dominant carrier rules are followed.

Second, and more pointedly, the new 1996 Act does not even suggest that the Commission cannot impose a separate subsidiary safeguard as a precondition to nondominant regulatory status. Section 271(b)(2) of the Act authorizes the RBOCs to provide out-of-region

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<sup>18</sup> Public Law No. 104-104, 110 Stat. 56 (1996) ("The 1996 Act").

<sup>19</sup> BellSouth Comments at 2, 4, 2.

<sup>20</sup> Ameritech Comments at 7; Bell Atlantic Comments at 4-5; SBC Comments at 6.

<sup>21</sup> US West Comments at 2; Pacific Bell Comments at 5.

interLATA services upon enactment,<sup>22</sup> while Section 272(a)(2)(B) simply indicates that out-of-region services are not those "services for which a separate affiliate is required" under the statute.<sup>23</sup> These provisions do not forbid the FCC from requiring the RBOCs to employ separate subsidiaries to provide all out-of-region interLATA services, nor do they limit the FCC's considerable authority to determine the appropriate regulatory structure to apply to the RBOCs' provision of out-of-region services. Just because the statute mandates the use of a separate subsidiary for in-region interLATA services, does not in any way imply that the statute prohibits the Commission from establishing a separate affiliate structure as a condition of nondominant regulation of out-of-region services. Despite what the RBOCs claim, the 1996 Act is completely silent on the issue.

Finally, the Communications Act of 1934, as amended, gives the FCC ample power to establish regulations that will assure just and reasonable rates, terms, and conditions of service by the RBOCs,<sup>24</sup> and nondiscriminatory treatment of all service providers and end users.<sup>25</sup> Nothing in the new 1996 Act, expressly or implicitly, supersedes this overarching public interest authority.

Thus, ironically, the RBOCs' arguments against the proposed separate subsidiary themselves are "inconsistent" with the proposed terms of the Notice, the actual words of the 1996 Act, and the continuing public interest reach of the 1934 Act. The Commission is free to

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<sup>22</sup> Section 271(b)(2), the 1996 Act.

<sup>23</sup> Section 272(a)(2)(B), the 1996 Act.

<sup>24</sup> 47 U.S.C. § 201(b) (1994).

<sup>25</sup> 47 U.S.C. § 202(a).

impose on the RBOCs' provision of out-of-region services whatever public interest safeguards are dictated by the record in this proceeding. That record clearly supports a well-crafted separate subsidiary requirement as a critical condition of nondominant status for the RBOCs' out-of-region services.

**C. Although LDDS WorldCom Does Not Necessarily Oppose Nondominant Treatment of The Bell Companies' Separate Subsidiary, The Conditions Must Be Strengthened Significantly To Guard Against Potential Anticompetitive Activities By The Bell Companies**

While LDDS WorldCom supports the Commission's proposed bifurcated approach establishing nondominant regulation if the RBOCs provide their out-of-region interLATA services via a separate affiliate, and dominant regulation in the absence of such an affiliate, there are serious concerns that the separate affiliate structure advocated in the Notice is woefully insufficient to act as a viable safeguard.<sup>26</sup> Most commenters share this serious concern, and suggest various changes that will significantly strengthen the proposed affiliate structure.<sup>27</sup>

LDDS WorldCom strongly supports a number of these suggested improvements:

- o The proposed structural separation between affiliate and RBOC parent must be more complete, with separate officers, directors, and employees; use of separate switching and transmission facilities, and separate databases; conduct of all affiliate transactions on an arms-length basis; and separate financing and credit obligations so that the affiliate cannot rely on the RBOC to guarantee its debts.<sup>28</sup>

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<sup>26</sup> Of course, LDDS WorldCom's position in this proceeding in no way implicates its position on the wholly separate issue of the proper regulatory treatment of the RBOCs' provision of in-region interLATA services, if and when such authority eventually is granted.

<sup>27</sup> See CompTel Comments at 8-14; AT&T Comments at 7-10; MCI Comments at 10-23; Cable & Wireless Comments at 3-5; Sprint Comments at 3-5; TRA Comments at 18-22; ALTS Comments at 4-6; Excel Comments at 2-7; Ohio Public Utilities Commission at 4-10.

<sup>28</sup> CompTel Comments at 8-9; TRA Comments at 20-21; Cable & Wireless Comments at 3-5; Ohio PUC Comments at 4-6.



- o The RBOC must be prohibited from joint marketing its out-of-region interLATA services and in-region LEC services; this prohibition should include the marketing of out-of-region interLATA services to in-region LEC customers, as well as the marketing of LEC services outside the RBOC's region in conjunction with its out-of-region interLATA services.<sup>29</sup>
- o The RBOC's out-of-region affiliate must obtain all pertinent Title II communications services from the RBOC's generally-applicable tariffs.<sup>30</sup>
- o The RBOC's out-of-region affiliate must have no preferential access to non-Title II services offered by the RBOC, such as billing and collection services.<sup>31</sup>
- o The RBOC's affiliate transaction practices and cost allocation procedures should be subject to annual independent audit.<sup>32</sup>

Several commenters also note that the Commission could simply decide to apply to the RBOCs' nondominant out-of-region services the same structural separation requirements that are dictated for their in-region services by Section 272 of the 1996 Act.<sup>33</sup> LDDS WorldCom agrees. This proposal has the important virtue of creating one unified separate affiliate requirement which the RBOCs could meet in order to provide both out-of-region and in-region services. Of course, many of the key improvements suggested by the initial commenters regarding the proposed affiliate rules in the Notice would still apply to the Section 272 affiliate requirements in both the in-region and out-of-region contexts.

In addition, LDDS WorldCom agrees with several clarifications requested by

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<sup>29</sup> CompTel Comments at 10; AT&T Comments at 7-8; ALTS Comments at 4; Excel Comments at 6-7.

<sup>30</sup> CompTel Comments at 10.

<sup>31</sup> CompTel Comments at 11; ALTS Comments at 5-6; TRA Comments at 19-20.

<sup>32</sup> CompTel Comments at 11; AT&T Comments at 8-9; TRA Comments at 19-20; Ohio PUC Comments at 7-8; MCI Comments at 19-20.

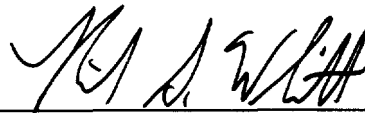
<sup>33</sup> See, e.g., CompTel Comments at 9; Sprint Comments at 3-5; Excel Comments at 6.

CompTel. In particular, the RBOCs' out-of-region affiliate should be classified as dominant where the affiliate provides interLATA services in a region where the RBOC has a cooperative arrangement with that region's incumbent LEC.<sup>34</sup> Moreover, incidental services authorized by the 1996 Act should be treated in the same fashion as the RBOCs' out-of-region interLATA services.<sup>35</sup>

### III. CONCLUSION

For the reasons articulated above, the Commission should adopt a strengthened form of its original proposal to regulate as nondominant the out-of-region interexchange services provided by the Bell Operating Companies.

Respectfully submitted,



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March 25, 1996

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<sup>34</sup> CompTel Comments at 12; ALTS Comments at 5.

<sup>35</sup> CompTel Comments at 14.

## **CERTIFICATE OF SERVICE**

I, Cecelia Y. Johnson, hereby certify that I have this 25th day of March, 1996, sent a copy of the foregoing "Reply Comments of LDDS WorldCom" by hand delivery to the following:

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Attachment A

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